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No. 737. June Term, 1877.

In the Court of Common Pleas, No. 2, for the County of Philadelphia.

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IN EQUITY.

BETWEEN

The Library Company of Philadelphia, Complainants,

AND

William J. Donohugh, Collector of Delinquent Taxes for the City of Philadelphia, Defendant.

BILL.

FILED JUNE 14th, 1877.

To the within-named Defendant:

You are hereby notified and required, within fourteen days after service hereof on you, exclusive of the day of such service, to cause an appearance to be entered for you in the Court of Common Pleas of Philadelphia County, No. 2, to the within bill of complaint of the within-named Complainant, and to observe what the said Court shall direct.

Witness our hands at Philadelphia, this fourteenth day of June, one thousand eight hundred and seventy-seven.

WM. HENRY RAWLE,
710 Walnut Street.

R. C. McMURTRIE,
416 Walnut Street.

NOTE.—If you fail to comply with the above directions, by entering an appearance in the Prothonotary's Office within fourteen days, you will be liable to have the bill taken *pro confesso*, and a decree made against you in your absence.

ALLEN, LANE & SCOTT, PRS. PHILA.

In the Court of Common Pleas, No. 2, for the County of Philadelphia.

Of June Term, 1877. No. 737.

Between

The Library Company of Philadelphia, Complainant,

and

William J. Donohugh, Collector of Delinquent Taxes of the City of Philadelphia.

The complainant avers as follows, to wit:—

I. By deed dated the first day of July, 1731, the corporation complainant, then an association, was founded at Philadelphia by Benjamin Franklin, James Logan and others as an institution for the advancement of learning and the more useful dissemination of knowledge, and the first meeting of the directors thereof was held on the eighth day of November, 1731.

The books composing the library were originally placed on the shelves "of Robert Grace's chamber, at his house in Jones' alley," and the librarian was, by the rules, required to permit "any civil gentleman to peruse the books of the library in the library-room."

II. On the twenty-fifth day of March, A. D. 1742, John, Thomas and Richard Penn, proprietaries of Pennsylvania, by letters patent, reciting that Benjamin Franklin, and others therein named, had, "at a great expense, purchased a large

and valuable collection of useful books, in order to erect a library for the advancement of knowledge and literature in the city of Philadelphia," and "being truly sensible of the advantage that may accrue to the people of this Province by so useful an undertaking and being willing to encourage the same," created a body corporate by the name of "The Library Company of Philadelphia," by virtue of which said letters patent, and of certain supplemental acts of the legislature, to all of which reference is craved if necessary, the complainant now exists as such body corporate.

III. In addition to the original foundation of the said corporation, it is the trustee, under the will of James Logan, of certain real estate, and of a collection of books known as the Loganian Library. This real estate and collection of books were, by indenture dated the 25th of March, 1760, conveyed by the executors of James Logan to William Allen and others, in trust, for certain purposes therein set forth. An addition to the said collection of books was subsequently made by the will of William Logan; and, by an act of the legislature, approved the thirty-first day of March, 1792, reciting that James Logan—the only surviving trustee of the said institution—had requested the legislature that, pursuant to an agreement between himself and the directors of the Library Company of Philadelphia, the real estate and collection of books might be vested in the Library Company aforesaid: and, that power might be given to make such provisions as might most effectually tend to render the said institution beneficial to the public, consistently with the design of the founder, it was enacted that the said real estate and books should be vested in the Library Company of Philadelphia aforesaid, its successors and assigns, forever, in trust, for the support and increase of the said Loganian Library. This collection of books, of which the complainants are thus the trustee, now exceeds ten thousand volumes, and is one of the most valuable of the kind in the United States. Since the year 1793, the books have always been kept in the same

building as those of the Library Company, and under the care of the same librarian. Books may be taken out of the Loganian Library without charge by any person who leaves a deposit of double their value as security. The library is absolutely free.

Additions have also been made to the library by its association, in 1769, with the Union Library Company of Philadelphia, under an act of the legislature, approved on the thirteenth day of March of that year, to which reference is craved; in 1771, with the Associated Library Company and the Amicable Company; by a bequest, in the year 1804, by John Bleakley and the Rev. Samuel Preston; by the bequest, in the year 1827, of the Mackenzie Library; and by numerous other gifts and bequests of books from time to time, none of them very large, but together forming a valuable collection which for nearly one hundred and fifty years has been freely open to the citizens of Philadelphia.

The number of books thus belonging to the complainants now exceeds one hundred thousand volumes.

IV. The corporation is composed of members, and is maintained by their annual contributions, and from the income derived from such property as has been given to it, and from fees paid for the use of the books from persons not members.

All the profits and income of the corporation, after defraying the necessary expenses of maintenance, are applied to the purchase of books. The institution is managed by twelve directors, annually chosen by the members, who receive no compensation for their services, and the use of the books is given—

1. Without charge or compensation to all persons using them within the library building;

2. To all members, with certain usual limitations as to the number of volumes that may at any time be taken for use without the building;

3. To all persons, for a small compensation, who wish to use the books without the building, and give security for their return.

V. The original purpose for which the corporation was created was the collection and use of books by the members at their homes, as a circulating library. It was the first of that kind in this country, and has ever since preserved its character. The profits arising from subscriptions and other sources are devoted exclusively to the expense of the library and to its increase, and are not employed for the pecuniary use or benefit of the members.

VI. Your orators, therefore, are advised and aver that they are a corporation for charitable and literary uses, and are entitled to the aid of a court of chancery for preserving and protecting their rights.

VII. From the first organization of the library down to the present time, the complainant has never been considered to be a proper subject of taxation.

By the first section of the ninth article of the Constitution of this Commonwealth, it was provided that the General Assembly might by general laws exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity; and in pursuance of this provision the legislature, by an act approved the fourteenth day of May, 1874 (P. L., 158), enacted that amongst other things, all hospitals, universities, colleges, seminaries, academies and associations and institutions of learning, benevolence or charity, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same found [founded], provided, endowed and maintained by public or private charity, should be exempted from all and every county, city, borough, county, road, school and poor tax: *Provided*, That all property other than that which was

in actual use and occupation for the foregoing purposes and from which any income or revenue was derived should be subject to taxation, except where exempted by law for State purposes.

The building situate on Fifth street is used exclusively as a place in which to keep the books of the library company, and those held by it under the trusts aforesaid, and such few pictures and curiosities as have become its property by gift. It has never been used for any purpose yielding income or pecuniary profit of any kind to anyone, but has always been actually used, occupied and enjoyed for the purposes of an association or institution of learning, as contemplated by the charter.

The building and premises on Fifth street, so occupied, being properly used and necessary for the occupancy and enjoyment of said institution or association, is and always has been exempt from the payment of taxes under the general laws and Constitution of this Commonwealth, whereby it is able to devote its entire income to literary and charitable purposes.

VIII. Apart, however, from the fact that the complainant is exempted from taxation by the law of the land, it has been especially exempted by the department of municipal government having exclusive cognizance of such matters, to wit, the Board of Revision of Taxes for the County of Philadelphia. The following is a copy of the said exemption, as appearing on the books of said board:—

"Fifth street, east side, N. E. corner Library.
"Philadelphia Library Company.
"2-story building, 74 x 88. $60,000.

"EXEMPT."

IX. By the act creating the said Board of Revision, approved the fourteenth day of March, A. D. 1865, it is provided that they shall have power to revise and equalize the assessments by raising or lowering the valuations, either in

individual cases or by wards, to rectify all errors, to make valuations where they have been omitted, and to require the attendance of the assessors or other citizens before them for examination, on oath or affirmation, either singly or together, with power to forfeit the pay of assessors, ratably to their annual compensation, for each day's absence when their attendance is required. And the said Board of Revision shall hear all the appeals and applications of the taxpayers, subject to an appeal from their decision to the Court of Common Pleas of the county, whose decision shall be final; and if the appeal to the court shall be groundless, the appellant shall pay the cost of appeal; and the City Commissioners shall have no power to correct or revise the taxes, but shall receive, in writing, the request of the taxpayers to have their taxes reduced, and lay them before the Board of Revision at the next meeting.

By the supplement to the said act, approved the second day of February, 1867, it is further provided that the said Board of Revision shall issue precepts to and receive the returns of the assessors, procure the assessment books, and cause the duplicates to be made out and issued to the Receiver of Taxes, make the returns required by law to the State Revenue Board, and have the *exclusive* custody and control of all books relating to the assessment of taxes, and keep them arranged according to wards and dates; and, also, have the custody and control of the duplicates of surveys, when the same shall have been made by the Department of Surveys; they may issue certificates to show how property has been assessed, to be used with the same effect as the original book of assessment, as evidence in relation to the title of property; they shall report to Councils, through the mayor, the aggregate of the assessment on or before the first day of November in each year; and the City Commissioners of Philadelphia shall exercise none of the powers embraced in this act or the act to which this is a supplement.

And by a further supplement, approved the twelfth day of April, 1873, it is also provided that the Board of Revision shall have power to appoint and remove the assessors for the

city of Philadelphia; and the said board were also authorized to affix the seal of the city of Philadelphia to their official certificates.

X. By virtue of the foregoing acts of Assembly and the various supplements thereto, the complainant is advised and believes, and so avers, that as the decision of the said Board of Revision has not been appealed from in the manner provided in the said statutes, the same is now conclusive as to the matters therein contained, and cannot be disregarded by any other branch of the municipal government, or by any person claiming to act under authority thereof.

XI. The defendant is the Collector of Delinquent Taxes for the city of Philadelphia, appointed by virtue of an act of the legislature, approved the twenty-fourth day of March, 1870, wherein it was provided that the Receiver of Taxes of the city of Philadelphia should appoint a person for the purpose of collecting all delinquent taxes due and owing to the said city; and it was further provided that the compensation of the said collector should be five per cent. upon the amount so as aforesaid collected by him.

XII. The complainant is informed and believes that the defendant, assuming to act under authority of the last-mentioned act of the legislature, is about to proceed against the complainant as a delinquent taxpayer, as to this particular property, for the payment of taxes from which it is and always has been exempt. And the defendant further threatens and intends to proceed to the enforcement and collection of the said tax, averring and pretending that the said act of 1874 is unconstitutional and void, and that the Board of Revision aforesaid have no power or authority to exempt the property of the complainants from the payment of taxes; the contrary whereof the complainant is advised and submits to the court. And the complainant avers that the whole of the building and property which it is proposed to charge with such taxes is an institution of learning and charity, which was founded,

endowed and is maintained as such from the said donations and the annual contributions of the members. And if it should be pretended that because there are persons called members who are authorized to vote on the selection of directors and officers of this Library, the institution ceases to be an institution of learning or charity, the complainants deny the pretense to be well founded, and charge that the whole scheme and design of the Library is to furnish books for the use of the community; and that this mode of creating a constituency to select the management of the Library is a matter of mere convenience, and one which, as such, generally prevails among other institutions which have also been judicially declared to be charities, the expenses of maintaining the institutions being obtained from endowments and contributions, and no profit of any pecuniary character being directly or indirectly obtained by the governors or members thereof.

And the complainant further avers, that any tax levied will result in nothing but diminishing the fund that is applied to increase and maintain the collection of books, and will not in any manner be paid out of any fund which any individual could lawfully apply to his own uses, and, therefore, the said institution is within the provision of the statute and is lawfully exempted from taxation.

And the complainant further avers, that even were the said act of 1874 held to be unconstitutional, yet that the official certificate of exemption, issued by the department of this municipality in whom exclusive control over such matters has been vested, cannot be impeached in any other manner than by an appeal to the Court of Common Pleas of the county, as provided in the said acts.

Wherefore the complainant needs equitable relief, as follows:—

1. That the rights of the parties may be ascertained in the premises, and that it may be declared that the complainant is

a purely public charity, as well as an institution of learning, benevolence or charity; or, in the alternative, that it be decreed that the exemption so as aforesaid declared by the Board of Revision is binding and conclusive upon the defendant.

2. That an injunction do issue, preliminary until hearing and perpetual thereafter, to restrain the defendant from proceeding to enforce the pretended claim so as aforesaid asserted by him.

3. General relief.

WM. HENRY RAWLE,
R. C. McMURTRIE.

The Library Company of Philadelphia
vs.
William J. Donohugh.

Common Pleas, No. 2.
January Term, 1877.
No. 737.

SPECIAL INJUNCTION AFFIDAVIT.

Lloyd P. Smith, being duly affirmed, says:—I am now and for the last twenty-six years have been librarian of The Library Company of Philadelphia.

By deed dated the first day of July, 1731, the said Library Company, then an association, was founded at Philadelphia, by Benjamin Franklin, James Logan and others as an institution for the advancement of learning and the more useful dissemination of knowledge, and the first meeting of the directors thereof was held on the eighth day of November, 1731.

The books composing the library were originally placed on the shelves "of Robert Grace's chamber, at his house in Jones' alley," and the librarian was, by the rules, required to permit "any civil gentleman to peruse the books of the library in the library-room."

On the twenty-fifth day of March, A. D. 1742, John, Thomas and Richard Penn, proprietaries of Pennsylvania, by letters patent, reciting that Benjamin Franklin, and others therein named, had, "at a great expense, purchased a large and valuable collection of useful books, in order to erect a library for the advancement of knowledge and

literature in the city of Philadelphia," and "being truly sensible of the advantage that may accrue to the people of this Province by so useful an undertaking and being willing to encourage the same," incorporated "The Library Company of Philadelphia," aforesaid.

In addition to the original foundation of the said company, it is the trustee, under the will of James Logan, of certain real estate, and of a collection of books known as the Loganian Library. This real estate and collection of books were, by indenture dated the 25th of March, 1760, conveyed by the executors of James Logan to William Allen and others, in trust, for certain purposes therein set forth. An addition to the said collection of books was subsequently made by the will of William Logan; and, by an act of the legislature, approved the thirty-first day of March, 1792, reciting that James Logan—the only surviving trustee of the said institution—had requested the legislature that, pursuant to an agreement between himself and the directors of the Library Company of Philadelphia, the real estate and collection of books might be vested in the Library Company aforesaid: and, that power might be given to make such provisions as might most effectually tend to render the said institution beneficial to the public, consistently with the design of the founder, it was enacted that the said real estate and books should be vested in the Library Company of Philadelphia aforesaid, its successors and assigns, forever, in trust, for the support and increase of the said Loganian Library. This collection of books, of which the complainants are thus the trustee, now exceeds ten thousand volumes, and is one of the most valuable of the kind in the United States. Since the year 1793, the books have always been kept in the same building as those of the Library Company, and under the care of the same librarian. Books may be taken out of the Loganian Library without charge by any person who

leaves a deposit of double their value as security. The library is absolutely free.

Additions have also been made to the library by its association, in 1769, with the Union Library Company of Philadelphia, under an act of the legislature, approved on the thirteenth day of March of that year; in 1771, with the Associated Library Company and the Amicable Company; by a bequest, in the year 1804, by John Bleakley and the Rev. Samuel Preston; by the bequest, in the year 1827, of the Mackenzie Library; and by numerous other gifts and bequests of books from time to time, none of them very large, but together forming a valuable collection which for nearly one hundred and fifty years has been freely open to the citizens of Philadelphia.

The number of books thus belonging to the Library Company now exceeds one hundred thousand volumes.

The corporation is composed of members and is maintained by their annual contributions, and from the income derived from such property as has been given to it, and from fees paid for the use of the books from persons not members.

All the profits and income of the corporation, after defraying the necessary expenses of maintenance, are applied to the purchase of books. The institution is managed by twelve directors, annually chosen by the members, who receive no compensation for their services, and the use of the books is given—

1. Without charge or compensation to all persons using them within the library building;

2. To all members, with certain usual limitations as to the number of volumes that may at any time be taken for use without the building;

3. To all persons, for a small compensation, who wish to use the books without the building, and give security for their return.

The original purpose for which the corporation was created was the collection and use of books by the members at their homes, as a circulating library. It was the first of that kind in this country, and has ever since preserved its character. The profits arising from subscriptions and other sources are devoted exclusively to the expense of the library and to its increase, and are not employed for the pecuniary use or benefit of the members.

Soon after the passage of the act of February 3d, 1824, by which real estate was made subject to a lien for taxes, the legislature by an act of the General Assembly, approved March 3d, 1826, provided that "From and after the passing of this act the building, and lot of ground situate on South Fifth street, in the city of Philadelphia, whereon the same is erected, and wherein the books belonging to The Library Company of Philadelphia and the Loganian Library are deposited, together with the books and other property of the said institution kept therein, shall be and hereby are exempted from taxation for the term of seven years." This exemption was subsequently made perpetual, and from that time down to the present the complainant has never been taxed for any purpose whatever, and has been specially exempted therefrom by the Board of Revision of Taxes for the County of Philadelphia. The following is a copy of the said exemption, as appearing on the books of said board:—

"Fifth street, east side, N. E. corner Library.
"Philadelphia Library Company.
"2-story building, 74 x 88. $60,000.
"**EXEMPT.**"

Accompanying this affidavit is a copy of the memorial of the Library Company presented to the said Board of Revision.

The defendant is the collector of delinquent taxes for the city, and I am informed and believe is about to proceed against the Library Company as a delinquent tax-payer as to this particular property, for the payment of taxes from which it is and always has been exempt.

LLOYD P. SMITH.

Lloyd P. Smith, being duly affirmed, says, that the facts here set forth are true, to the best of his knowledge, information and belief.

Affirmed before me, this 21st day of November, A. D. 1877.

[SEAL] J. H. WHEELER,
Notary Public.

COPY OF THE MEMORIAL OF THE LIBRARY COMPANY OF PHILADELPHIA TO THE BOARD OF REVISION OF TAXES, UPON WHICH THE LATTER DECIDED THAT THE LIBRARY BUILDING WAS WITHIN THE LAWS EXEMPTING TAXATION.

To the Board of Revision of Taxation in the
City and County of Philadelphia:

The memorial of the Library Company of Philadelphia respectfully showeth—

That the memorialists were incorporated by John Penn, Thomas Penn and Richard Penn, Esquires, then being the Proprietaries of the Province of Pennsylvania, by charter dated the twenty-fifth day of March, 1742, which, after reciting that Benjamin Franklin and others therein named, being all persons of the best repute in the Province at that time, had at a great expense purchased a large and valuable collection of useful books in order to erect a library for the advancement of learning and literature in the city of Philadelphia, and that the Proprietaries were truly sensible of the advantages that might accrue to the people of the Province by so useful an undertaking and were willing to encourage the same, constituted the memorialists a body politic, with the usual incidents of such corporate existence: and that this charter amongst other things provided for the increase and preservation of the said library, that every member of the said company should pay into the hands of the company's treasurer for the the time being, the sum of ten shillings, (now increased to eight dollars,) on the first Monday of May in every year forever; and that those who neglected so to do within a year thereafter, should forfeit their shares and membership.

That since the grant of this charter, the collection of books of the memorialists has largely increased, not only from the moneys accumulated by the small annual subscriptions of the members, but by moneys and libraries of books bequeathed by persons actuated by the same public spirit as the founders of the institution; but at no time under the charter or the by-laws of the company have any dividends of money or other property ever been made among the members or agreed to be made; nor would such a thing be possible under the present charter.

That by the first of the regulations of the company governing the disposition of its property, all persons, without discrimination, are allowed to consult the books in the room in which they are kept, without charge; and by the fourth of these regulations all persons, not members, are allowed to take books out of the library, on giving a note and depositing a sufficient sum to secure their return, a matter essential to keep the collection in its integrity, and paying a small sum weekly; and the members have no greater advantages than this, besides voting for the officers, except that their shares are held as security for the due return of books, in lieu of a money deposit, and that the weekly payments are commuted by payment of an annual sum, but only to the extent of a very few volumes at a time: beyond this, they only share the privileges of the rest of the public.

That the collection of books belonging to your memorialists, besides those which constitute the stock of an ordinary circulating library, comprehend books purchased systematically and designedly at an expense beyond that within the means of the general public, on scientific, artistic, mechanical and religious subjects, which are open to all for gratuitous study; and that of the advantage and benefit of this, artisans, mechanics and scientific men habitually avail themselves. So that by this means, as well as through the ordinary working of the institution, an amount of useful knowledge has been diffused throughout the community of invaluable importance, which could not otherwise be as well obtained, and which exceeds that which is afforded by the best educational institutions this Commonwealth has as yet been able to give.

That, as above appears, the Library Company was in its origin created and endowed from motives of pure public advantage, so they aver it has ever since been carried on in the same spirit; and that which has been contributed in money by the now long series of its members has always resulted far more in that public advantage than in benefit to themselves; indeed, not at all to them, except as part of the public.

That in all times and in none more than in the present, the distribution of useful knowledge, the dissipation of ignorance and error by proper culture, the substitution of refinement and serious study for material pleasures, and that training of the intelligence which produces able-minded citizens, have been considered to be of not less importance to a State than the care of its bodily sick and poor and feeble, and when the means to secure these ends have been given gratuitously, to be equally within the scope of any true definition of charity.

That the new Constitution of this Commonwealth, in prohibiting the legislature from passing any law exempting property from taxation, except (among other cases which do not concern your memorialists) those of "institutions of pure public charity," must, as your memorialists submit, have had in view no such narrow test of charity as would exclude institutions like their own, for so to do would have also excluded universities, colleges, scientific bodies, indeed, every benevolent and beneficent body in the Commonwealth, except hospitals and almshouses.

That the legislature of this Commonwealth, acting on a wide and sensible interpretation of the words of the Constitution, many of its members being fresh from the deliberations out of which that Constitution grew, and with a distinct recollection of what must have been there meant by the phrase "public charity," by the act of May 14th, 1874, provided amongst other things that "all hospitals, universities, colleges, seminaries, associations and institutions of learning, benevolence or charity, with the grounds thereto belonging, &c., founded, endowed and maintained by public or private charity, should be exempt from every county, city, borough, bounty, road, school and poor tax," which your memorialists submit must be, in the first instance, and at least until the question is determined by the highest judicial tribunal in the Commonwealth, an authoritative declaration binding on all bodies, except that highest tribunal; that for the purposes and within the meaning of that clause of the Constitution, learning, benevolence and charity, wherever gratuitously given or distributed, are synonymous or at least equivalent terms; and that to teach, to help and to succor are purposes in which the Commonwealth recognizes no difference.

That your memorialists are in their corporate capacity an institution of learning cannot be doubted, and that they were founded and endowed and are now maintained by private charity, in the sense that what they give in their contributions benefits themselves no more than the rest of the public, has been shown.

Your memorialists therefore pray that the Board of Revision shall declare that so much of your memorialists' property as is in their actual use and occupation, for the purpose above stated, from which no revenue is derived, should be, as it always has been hitherto, exempted from taxation, according to the provisions of the act of General Assembly above stated.

And your memorialists shall ever pray.